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9 FILED
APR 21 2010
JEANNE HICKS, Clerk
BY B. BOEHF Deputy

IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

Cause No. P1300CR20081339

Division 6

STATE'S RESPONSE TO DEFENDANT'S
MOTION TO DISMISS OR IN THE
ALTERNATIVE TO DISMISS THE
DEATH PENALTY (as a sanction for
prosecutorial misconduct)

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Response to Defendant's Motion to Dismiss or in the Alternative to Dismiss the Death Penalty as a Sanction for Prosecutorial Misconduct and requests that Defendant's Motion be denied. The defense team's fifteen page argument on these issues can be condensed into a single sentence. The defense wants this case dismissed or the death penalty dismissed because the State is doing the job it is required to do.

Regarding the 10.1 issue, that portion of the motion should be precluded because it is untimely. *Ariz. R. Crim. P.*, Rule 16.1(b) and (c) provide that "[a]ll motions shall be made no later than 20 days prior to trial ... unless the basis therefore was not then known." The deadline for filing motions was April 14, 2010. Defendant's insistence that delay was

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1 necessary because he was waiting for the latest round of DNA testing results is insufficient a
2 reason to excuse the untimely filing related to prosecutorial misconduct regarding the State's
3 filing of the 10.1 motion. The two issues are absolutely unrelated. More importantly, the
4 Rule 10.1 Motion was not without basis or filed frivolously. The Judge made a comment
5 which caused the State great concern. The defense should acknowledge that the State, as
6 well as a defendant, has the right to have a case heard by an independent, fair and impartial
7 judge. The steps initiated by the State to resolve the issue were undertaken logically,
8 judiciously and judicially. Moreover, the State is both relieved by and satisfied with Judge
9 Lindberg's testimony and Judge Brutinel's decision.

11 As to the State's refusal to dismiss the death penalty, that decision is one the State has
12 and will continue to consider and reconsider at every point throughout these proceedings.
13 The presence of unidentified DNA on the victim's fingernail is, without a doubt, an obstacle
14 the State will have to deal with at trial; however, at this point, the State is fully convinced
15 Defendant brutally murdered Carol Kennedy and that his motive was pecuniary gain. Under
16 these circumstances, the State, by and through the Yavapai County Attorney's Office,
17 believes the death penalty is appropriate. This carefully considered decision by the County
18 Attorney's Office cannot be considered the equivalent to prosecutorial misconduct.

20 Defendant's motion to dismiss, or in the alternative to dismiss the death penalty,
21 should be precluded as untimely or summarily denied without argument as Defendant has
22 failed to demonstrate any valid instance of prosecutorial misconduct which would warrant
23 such sanctions.

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RESPECTFULLY SUBMITTED this 28th April, 2010.

Sheila Sullivan Polk
YAVAPAI COUNTY ATTORNEY

By: [Signature]
Joseph C. Butner
Deputy County Attorney

COPIES of the foregoing delivered this
28th day of April, 2010 to:

Honorable Thomas J. Lindberg
Division 6
Yavapai County Superior Court
(via email)

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